



**FEE AND REGULATORY DISCLOSURE**

Version 10/31/2019

This disclosure schedule sets forth a summary of certain information in the attached Agreement. This disclosure is for Merchant's information only and does not provide all of the information pertinent to the Agreement. ISO recommends that the Merchant thoroughly review the Agreement and contact ISO with any questions. In the event of any conflict between the terms of the Agreement and the terms of this Fee and Regulatory Disclosure cover page, the terms of the Agreement shall control. Capitalized terms not otherwise defined in this Fee and Regulatory Disclosure have the meanings set forth in the attached Agreement.

<p><b>ISO</b></p>	<p>Please contact ISO with any questions regarding Merchant's account (processing, funding, hardware/software, billing/fees, Chargebacks/disputes, the Agreement, etc.).</p> <div style="text-align: center;">  <p>170 S Interstate Plz, Ste 200 Lehi, UT 84043 Customer Service Phone Number: 855-943-5763</p> </div>
<p><b>Bank</b></p>	<p>ISO places accounts with the following acquiring banks. The acquiring bank that has accepted the account will be identified in the welcome packet.</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">  <p>9116 Sunland Blvd Sun Valley, CA 91352 Customer Service Phone Number: 818-394-2300</p> </div> <div style="text-align: center;">  <p>7690 N Palm Ave Fresno, CA 93711 Customer Service Phone Number: 559-439-0200</p> </div> </div>
<p><b>Funds Settlement</b></p>	<p>Merchant will be provisionally paid for Transactions after the expiration of any applicable hold period, less (i) the amount allocated to a Reserve Account (if any), (ii) any offsets (for chargeback amounts, outstanding fees owed, etc.), (iii) daily billing (if any), and (iv) any other amounts due under the Agreement. Deposits for amounts due to Merchant, and withdrawals of amounts due from Merchant, will generally be posted to the Bank Account by ACH, but may be collected by Bank through other means as necessary. Bank may revoke any provisional payment subsequently charged back or found to be invalid.</p>
<p><b>Statements</b></p>	<p>Statements may be accessed on the Merchant Hub; they also may be mailed. If statements are not being received, please contact ISO.</p>
<p><b>Overview of Fees/Rates</b></p>	<p>A list of the main fees charged under this Agreement (at the rates specified on the Merchant Application) include for example:</p> <ul style="list-style-type: none"> <li style="width: 50%;">• Percentage fees and per item fees assessed on Transactions (presented on the Merchant Application as Qualified rates, Mid-Qualified rates, Non-Qualified rates, Sub-Qualified rates, Cost-Plus rates, and/or Flat-Rate rates)</li> <li style="width: 50%;">• Termination Fee</li> <li style="width: 50%;">• Electronic Authorization Fee</li> <li style="width: 50%;">• Annual Fee</li> <li style="width: 50%;">• Electronic AVS Fee</li> <li style="width: 50%;">• Monthly Account Maintenance Fee</li> <li style="width: 50%;">• Chargeback/Dispute Fee</li> <li style="width: 50%;">• Monthly Minimum Fees</li> <li style="width: 50%;">• PCI Maintenance Fee</li> <li style="width: 50%;">• PCI Non-Validation Fee</li> </ul> <p>A list of all fees/rates can be found in the Merchant Application. ISO charges fees on sale and refund transactions. If Merchant is unsure as to the calculation or applicability of any fee, please contact ISO and it will explain in greater detail.</p> <p>The way the most common fees are calculated is as follows:</p> <ul style="list-style-type: none"> <li>• Under Tiered Pricing, Transactions are categorized into tiers (e.g. qualified, mid-qualified, non-qualified, and sub-qualified) and assessed the percentage fee and per item fee that are specified for that tier on the Merchant Application.</li> <li>• Under Cost-Plus Pricing, Transactions are assessed the percentage fee and per item fee specified on the Merchant Application in addition to the Interchange Fees applicable to the Transactions.</li> </ul> <p>The tier into which a Transaction falls or the Interchange Fee applicable to a Transaction is determined by Servicer in its sole discretion and depends on a number of factors, including the card type, transaction type, payment method, authorization, and timeliness of submitting the Transaction. Upon Merchant's request, ISO can provide information about the tier or Interchange Fee applicable to a particular Transaction.</p> <p>Each Card Brand may assess miscellaneous surcharges to Transactions based on the type of transaction, method of transaction, transaction classification, and other metrics set forth in the Rules. Merchant is responsible for reviewing the applicable Rules (available on each Card Brand website or upon request from ISO) regarding applicable surcharges. Any miscellaneous Card Brand surcharges that have been assessed will be shown on the Merchant's monthly statement. If Merchant is unsure about the nature of any fee displayed on Merchant's monthly statement, please contact ISO and it will explain in greater detail.</p> <p>Merchant may be subject to additional fees from third parties, such as Service Providers, in connection with services from such third parties.</p>
<p><b>Information Security (PCI DSS)</b></p>	<p>Merchant is responsible for the security of the Cardholder information that Merchant accesses, stores, processes, or transmits. Merchant is required to validate its compliance to the PCI DSS and present evidence of Merchant's PCI DSS compliance validation to ISO at intervals defined by the Card Brands and this Agreement. ISO provides tools and support to assist Merchant in this process in exchange for the PCI Maintenance Fee. If Merchant has not presented ISO with evidence of Merchant's compliance validation to the PCI DSS within 90 days of the Effective Date, Merchant will be charged the PCI DSS Non-Validation Fee monthly until Merchant presents its compliance validation.</p>
<p><b>Effective Date</b></p>	<p>This Agreement shall become binding upon Merchant, ISO and Bank as of the Effective Date as identified in the welcome packet.</p>
<p><b>Contract Term</b></p>	<p>The initial term of this Agreement shall be for the period of time specified in the Agreement Term section of the Merchant Application, beginning on the Effective Date. Merchant must advise Bank and ISO 90 days before the expiration of the Initial Term if it does not wish to renew the Agreement or the Agreement will automatically renew for the period of time specified in the Agreement Term section of the Merchant Application. Merchant must advise Bank and ISO 90 days before the expiration of any Renewal Term if it does not wish to renew the Agreement or the Agreement will automatically renew for successive Renewal Terms.</p>
<p><b>Termination</b></p>	<p>The Agreement can be cancelled by Merchant without penalty within 30 days of a fee increase or a new fee only if the fee increase or new fee is not passed through from the Card Brands. There is a fee for Merchant to cancel the contract for any other reason unless otherwise indicated in the Merchant Agreement. Upon termination of the Agreement, Merchant will be liable for any fees that would have accrued for the remaining term, the Termination Fee as specified in the Merchant Application, and any fees related to the Volume Commitment for each month remaining in the term of the Agreement. More information can be found in Article IV of the Merchant Agreement, under the headings Term and Termination and Effect of Termination.</p>
<p><b>Legal Procedure</b></p>	<p>If Merchant has a legal complaint, instructions can be found in Section 6.15 of the Merchant Agreement under the heading Dispute Resolution.</p>

This Merchant Agreement ("Agreement") is entered into by and between Bank, ISO, and the Merchant as of the Effective Date. Incorporated into this Agreement by reference are the Merchant Application and all associated exhibits and attachments.

#### ARTICLE I - DEFINITIONS

"ACH" means the Federal Reserve's Automated Clearing House paperless entry system.

"Authorization" means an approval by, or on behalf of, the Card Issuer to validate a Transaction. An Authorization indicates that the Card Issuer has confirmed there is sufficient availability of funds on the Cardholder's account at the time the Authorization is requested.

"AVS" (Address Verification System) means the system that allows verification of the Cardholder's ZIP code and billing address while requesting authorizations for Transactions or during a request for address verification only.

"Bank" means the financial institution identified in the Merchant's welcome packet or any other financial institution to which this Agreement is assigned.

"Bank Account" means the bank account set forth in the Agreement and maintained by Merchant as set forth in Section 5.9 for the crediting of collected funds and the debiting of fees and charges pursuant to this Agreement. The Bank Account information may be modified from time to time by Merchant's written request.

"Card" means (i) a valid credit or debit card in the form issued under license from any Card Brand or (ii) any other valid credit or debit card accepted by Merchant and facilitated by Servicer.

"Card Brand" means Visa U.S.A. Inc. ("Visa"), Mastercard International Incorporated ("Mastercard"), DFS Services LLC ("Discover Network") American Express Company ("American Express"), Diners Club International, or any other network through which Transactions may be routed or processed, and each of their subsidiaries, successors, and assigns.

"Cardholder" means the person authorized to use a Card or accounts connected with a Card.

"Card Issuer" means the financial institution or company, which has provided a Card to the Cardholder that is accepted by Merchant pursuant to this Agreement.

"Chargeback" means the procedure where a Transaction (or disputed portion thereof) is returned to Bank by a Card Issuer. Merchant is responsible for payment of all Chargebacks to Servicer.

"Credit Voucher" means a document executed by a Merchant evidencing any refund or price adjustment relating to Cards to be credited to a Cardholder account.

"Data Breach" means any alleged or actual compromise, unauthorized access, disclosure, theft, or unauthorized use of Merchant credentials, a Card, or Cardholder information, regardless of cause, including, without limitation, a breach of or intrusion into any system, or failure, malfunction, inadequacy, or error affecting any server, wherever located, or hardware or software of any system, through which data resides, passes through, or could have been compromised.

"Effective Date" means the date effective date identified in the welcome packet.

"Installment Transaction" means a Transaction in a series of Transactions that use a Stored Credential and that represent Cardholder agreement for Merchant to initiate one or more future Transactions over a period of time for a single purchase of goods or services.

"Interchange Fee" means the percentage of the gross Transaction amount and the per Transaction fees that are established and assessed by the applicable Card Brand. Interchange Fees are typically transferred between Bank and the Card Issuer.

"ISO" means Select Bankcard, Inc.

"Limited Accepted Merchant" means Merchant's option to accept one or more, but not all, categories of Cards as specified by Merchant in the Merchant Application.

"MATCH" means the Mastercard Alert to Control High-risk (Merchants) system which includes information about certain Merchants (and their owners) that an Acquirer has terminated.

"Merchant" means the business identified in the Merchant Information section of the Merchant Application.

"Merchant Application" shall mean the referenced Merchant Account Application, which is incorporated into this Agreement by reference, in the form approved by Servicer that is submitted by Merchant to ISO and which sets forth, among other material terms, Merchant's name, address, and pricing.

"Program Marks" means the brands, emblems, trademarks, and logos that identify Cards or Card Brands.

"Recurring Transaction" means a Transaction in a series of Transactions that use a Stored Credential and that are processed at fixed, regular intervals (not to exceed one year between Transactions), representing Cardholder agreement for Merchant to initiate future Transaction for the purchase of goods or services provided at regular intervals.

"Reserve Account" has the meaning set forth in Section 5.3.

"Rules" means all by-laws, operating regulations and/or all other rules, guidelines, policies and procedures of, regulations, and laws as respectfully amended from time to time of (i) the Card Brands; (ii) any applicable national, federal, state, or local jurisdiction; or (iii) Servicer. Rules specifically include the terms contained in the American Express Merchant Operating Guide, which sets forth the policies and procedures governing acceptance of the American Express Card in the United States, is available at <http://www.americanexpress.com/merchantopguide>, and is incorporated herein by this reference. If the Rules are amended, this Agreement will automatically be deemed revised to conform to the amended Rules.

"Service Providers" means Merchant's service providers, subcontractors, and agents that have been approved by Servicer to perform any of Merchant's obligations under this Agreement and which store, process, or transmit Cardholder data on behalf of Merchant.

"Servicer" means Bank and/or ISO.

"Services" means any and all services described in, and provided by Servicer to Merchant pursuant to this Agreement, including Authorization, settlement, and capture services for Merchant's acceptance of Cards for the sale of its goods or services identified in the Merchant Application, and any other services which Servicer agrees to provide in writing to Merchant.

"Stored Credential" means information including but not limited to a Card number that is stored by Merchant to process future Transactions.

"Transaction" means the exchange of goods or services, or credit for such goods or services, from Merchant to customer, where customer makes payment through the use of Card.

"Transaction Receipt" means an electronic or paper record of a Transaction (or a copy), generated at the point-of-Transaction.

#### ARTICLE II - MERCHANT REPRESENTATIONS, WARRANTIES, COVENANTS, AND AGREEMENTS

##### 2.1 Honoring Cards.

(a) Honoring all Valid Cards. Merchant will accept, without discrimination, all valid Cards properly presented for payment for bona fide, legitimate business transactions arising out of Merchant's usual

trade or business.

(b) Transaction Restrictions. Merchant may impose a minimum Transaction amount to all Cards that are credit cards (not debit cards) to the extent permitted by applicable Rules which amount shall not exceed \$10.00 unless any higher amount is established by law or the Rules. Merchant may not impose a maximum Transaction amount unless it is in compliance with applicable Rules and Merchant is a federal agency or institution of higher education. Any minimum or maximum Transaction amount shall not differentiate between Card Issuers or Card Brands. Merchant shall not require any Cardholder to pay any part of any fee imposed upon Merchant by this Agreement or ask or require Cardholders to waive dispute rights. Merchant may only assess a surcharge, convenience fee, or service fee to Cardholders to the extent permitted by the Rules and upon 30 days written notice to Bank and ISO. Merchant must also provide 30 days written notice to Card Brands as so required by the Rules before assessing any surcharge permitted by the Rules. This Section 2.1(b) does not prohibit Merchant from offering a discount to induce a customer to pay by cash, check, or similar means rather than using a Card.

(c) Limited Acceptance. Rather than accepting all categories of Cards, Merchant may acknowledge and agree that it wishes to be a Limited Acceptance Merchant and elect to limit its Card acceptance to any or all of the following Card types: Visa credit, Visa signature debit, Mastercard credit, Mastercard signature debit, Discover Network credit, Discover Network signature debit, and American Express. Merchant may opt out of accepting a Card Brand at any time without directly or indirectly affecting its rights to accept other Card Brands. Merchant's account will initially be set up to accept all Card types. If Merchant wishes to be a Limited Accepted Merchant, then it must so indicate on the Merchant Application. As a Limited Acceptance Merchant, Merchant will be solely responsible for the implementation of its decision for Limited Acceptance. Merchant will be solely responsible for policing, at the point of sale, the Card type(s) of Transactions it submits for processing by Servicer. Should Merchant submit a Transaction for processing for a Card type it has indicated it does not wish to accept, Servicer may process that Transaction and Merchant will pay the applicable fees, charges, and assessments associated with that Transaction.

##### 2.2 Card Acceptance.

(a) General. Merchant acknowledges its participation in Card acceptance is subject to the approval of the Card Brands. Granting Card acceptance to Merchant is the role of the Bank. Merchant authorizes Servicer and its affiliates to submit Card sales to, and receive settlement on, such sales from the Card Brands on behalf of Merchant. Merchant acknowledges that it may be converted from American Express Card acceptance to a direct relationship with American Express if and when its sales volumes exceed the American Express's eligibility thresholds. If this occurs, upon such conversion, (i) Merchant will be bound by American Express's then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by Merchant.

(b) Cardholder Verification. When accepting any Card and when completing any Card Transaction, Merchant shall follow all Rules. Merchant shall not accept a Card as payment (other than a mail, internet, telephone order, or preauthorized sale to the extent permitted under this Agreement and the Rules), if the person seeking to use the Card does not present the Card to permit Cardholder verification. When accepting a Card, Merchant will follow the steps provided by Servicer and will: (i) determine using commercially reasonable methods that the Card is valid on its face; (ii) check the effective date (if any) and the expiration date of the Card and examine any Card security features (such as a hologram) included on the Card; (iii) obtain Authorization before completing any Transaction; (iv) where Authorization is obtained, warrant the true identity of the customer as the Cardholder; (v) enter a description of the goods or services sold and the price thereof (including any applicable taxes); (vi) obtain the Cardholder's signature on the Transaction Receipt, when required according to the Rules, and compare that signature to the signature on the Card; and (vii) offer to Servicer the Transaction Receipt or other Transaction record for purchase according to their procedures and the terms of this Agreement. Merchant shall not require a Cardholder to sign a Transaction Receipt that does not include the final Transaction amount.

(c) Transaction Receipt. Merchant shall provide Cardholder a true and complete copy of the Transaction Receipt if required by the Rules at the time of the Transaction, unless another such time is permitted by the Rules. Merchant may provide Cardholder with an electronic Transaction Receipt if: (i) the Transaction is completed online; (ii) the Transaction occurs at a contactless-only acceptance device; or (iii) the Cardholder agrees to an electronic Transaction Receipt. The Transaction Receipt shall contain: (i) the disguised or suppressed Card number displaying only the last 4 digits of the Card number; (ii) the authorization code and reference numbers for Transactions that were authorized by Card Issuer; (iii) the Card Brand name for the Card that was used for the Transaction; (iv) customer signature for those Transactions that require a signature under the Rules; (v) a description of the goods or services; (vi) date and time of the Transaction; (vii) the amount of the Transaction, including tax and the symbol denoting the currency used; (viii) Merchant's return, refund, and cancellation policies (i.e., "No Refund," "No Exchange," "All Sales Final," "Exchange Only," etc.); (ix) the name that Merchant uses to identify itself to customers and the city and state/province of the Merchant outlet; and (x) the Transaction type (i.e., Credit, Purchase, Prepaid Load, etc.). Copies of Transaction Receipts must be kept for 3 years by Merchant.

(d) Responsibility for Transactions. Merchant will ensure that the Cardholder is easily able to understand that Merchant is responsible for the Transaction, including delivery of the goods or provision of the services that are the subject of the Transaction, and for customer service and dispute resolution, all in accordance with the terms applicable to the Transaction. Merchant will not deposit a Transaction until the Transaction is completed or the merchandise or services are shipped or provided, unless the Cardholder has agreed to pay a partial or full prepayment. Merchant must prominently and unequivocally inform the Cardholder of the identity of Merchant at all points of the interaction, such that Cardholder understands that Merchant is responsible for the Transaction, the delivery of products, and related customer support, and can easily distinguish Merchant from any other party, such as a supplier, ISO, and Bank. The Merchant name and location, as disclosed to the Cardholder, must be the same as provided in authorization and clearing Transaction messages.

**2.3 Authorization.** Merchant will obtain a prior Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization, Merchant will call the designated voice authorization number to request an Authorization from the designated authorization center ("Voice Authorization"), and, if Authorization is granted, will legibly print the Authorization number on the Transaction Receipt. If Authorization is denied, Merchant shall not complete the Transaction. Merchant will not obtain or attempt to obtain Authorization for any amount not authorized by Cardholder. Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale, that an Authorization is not a guarantee of payment, and that an Authorization will not waive any provision of this Agreement or otherwise validate a fraudulent Transaction or a Transaction involving the use of an expired Card.

Receiving an Authorization shall not relieve the Merchant of liability for Chargebacks. Merchant will not attempt to obtain Authorization on an expired Card. Merchant must not store any of the following information subsequent to Authorization: (a) full contents of any data taken from the magnetic stripe (on a Card, in a chip, or elsewhere); (b) Card Verification Value 2 (CVV2); (c) the PIN or the encrypted PIN block; or (d) "Visa Secure" verification data or similar Card Brand verification data. Merchant shall not communicate with the Cardholder regarding the reason for a declined or negative authorization response. If the Cardholder requests information about the reasons for a declined or negative authorization responses, then Merchant should advise the Cardholder to contact the Card issuer.

**2.4 Retention and Retrieval of Cards.** Merchant shall use its best efforts, by reasonable and peaceful means, to retain or recover a Card if: (a) the Card number appears on a "Card Recovery Bulletin" issued by a Card Brand; (b) Servicer requests the retention of the Card; (c) the 4 digits printed below the embossed or printed Card number (if present) do not match the first 4 digits of the embossed or printed Card number; (d) Merchant has reasonable grounds to believe that the Card is counterfeit, fraudulent, or stolen. Merchant shall immediately notify Bank and ISO if it recovers or retains a Card. This obligation does not authorize a breach of the peace or any injury to persons or property and Merchant will hold Bank and ISO harmless from any claim, damage, loss, or assessment in connection with the retention or recovery of a Card.

**2.5 Compliance with Law, Visa Cardholder Information Security Program, Non-Disclosure and Storage of Cardholder and Transaction Information Requirements.** During the term of this Agreement Merchant confirms that it is, and shall be, in full compliance with and be subject to the Rules, including those pertaining to providing specific and adequate disclosures to Cardholders of collection, use, and processing of personal data. Merchant acknowledges that it has the sole responsibility to obtain the Rules and updates thereto and comply with them. Merchant shall be solely responsible for conforming its policies and procedures to the Rules. Merchant agrees to consult legal counsel regarding such compliance. Any violations of the Rules by Merchant shall constitute a material breach of this Agreement. If there are any inconsistencies between the Rules and this Agreement, the Rules will govern. If any government entity, including the Federal Trade Commission, involves Servicer in any investigation of Merchant or files a complaint against Merchant, Merchant shall immediately notify Bank and ISO. ISO shall charge Merchant a \$15,000.00 fine along with any internal or external costs and legal fees Servicer incurs in relation to the investigation or complaint. Merchant will not, under any circumstances, sell, transfer, or disclose any Transaction or Cardholder data including but not limited to a Cardholder's account number or any information relating to any Cardholder's account number or Cardholder's personal information ("Sensitive Data") to any person other than Servicer unless Servicer has agreed to such disclosure in writing or Merchant is required to make such disclosure under the Rules. In the event of bankruptcy, insolvency, or other suspension of business operations, Merchant will either: (a) return all Sensitive Data and Confidential Information to Servicer; or (b) provide proof acceptable to Servicer of Merchant's destruction of all Sensitive Information and Confidential Information. Merchant will be solely responsible for the security, quality, accuracy, and adequacy of all Transactions and information supplied hereunder, and will establish and maintain adequate audit controls to monitor the security, quality, maintenance, and delivery of such data. Without limiting the generality of the foregoing, Merchant warrants to Bank and ISO that it has implemented and will maintain secure systems for storing and processing information and for transmitting information to and from Servicer. Merchant hereby represents, warrants, and covenants that it will process customer information promptly, accurately, and completely, and that Merchant is and will remain throughout the term of this Agreement in compliance with the Payment Card Industry ("PCI") Data Security Standard ("DSS"), the Account Information Security Program ("AISP") instituted by Visa, the Discover Information Security Compliance ("DISC"), the Site Data Protection Program ("SDP") instituted by Mastercard, the American Express Data Security Requirements and the American Express Technical Specifications, and the Europay, Mastercard and Visa global standard for inter-operation of integrated circuit cards ("EMV"), in effect and as they may be amended, supplemented, or replaced. Merchant will report any non-compliance immediately to Servicer. Merchant shall, at Merchant's sole expense, within 30 days of the first day of the Initial Term and on an annual basis thereafter (or more frequently if required by Servicer), validate its compliance with the PCI DSS and submit the appropriate PCI DSS attestation of compliance, according to the Rules, to Servicer. Servicer's acceptance of Merchant's PCI DSS attestation of compliance does not constitute a representation or warranty that Merchant is PCI compliant, nor does it relieve Merchant of any of its obligations or liabilities related to PCI DSS compliance or data security under this Agreement, applicable law, or otherwise. Neither Bank nor ISO shall have any liability whatsoever for the security or availability of any communications connection used in connection with the Services provided hereunder. Merchant acknowledges that Servicer is responsible only for the security of its own proprietary systems, and not for the systems of any third party, including, without limitation, any Service Provider. Merchant shall notify Bank and ISO immediately if Merchant becomes aware of or suspects a Data Breach. Merchant agrees to fully cooperate with Bank, ISO, and any Card Brand with respect to any investigation or additional requirements related to a suspected Data Breach. Merchant hereby agrees to pay any fines and assessments that may be assessed by the Card Brands as a result of Merchant's noncompliance with the requirements of PCI DSS, AISP, DISC, SDP, and EMV, any Data Breach, or by its failure to accurately validate its compliance with those requirements. If Merchant experiences a Data Breach, ISO shall charge Merchant a \$5,000.00 fine along with any internal and external costs and legal fees required for Servicer to complete its responsibilities relative to the breach. Merchant acknowledges and understands that Merchant may be prohibited from participating in Card Brand programs if it is determined that Merchant is non-compliant. The parties do not intend for EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council, as amended from time to time ("GDPR") to apply to the Services provided pursuant to this Agreement. In accordance with the foregoing, Merchant warrants, represents, and covenants that: (a) it conducts business solely in the United States; (b) it is not subject to the GDPR; (c) it does not market or solicit sales of its goods or services to individuals or businesses subject to the GDPR or located in an European Union member state; and (d) it does not market or solicit sales of its goods or services in a language of an European Union member state with the intent of conducting business with a resident of such member state.

**2.6 Returns and Adjustments.** Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered shall be established and posted in accordance with the Rules. Merchant's refund policies for any Card Brand sale must be at least as favorable as its refund policy for purchase on any other Card Brand. Merchant agrees to disclose its refund policy to the Cardholder before a Transaction is made along with any special conditions or circumstances that apply to the Transaction (e.g., late delivery, charges, or other noncredit terms), and in conformity with all Rules. If Merchant does not make the proper disclosures according to the Rules, a full refund in the form of a

credit to the Cardholder's Card account must be given. Merchant shall not refund cash to a Cardholder who paid for the item by Card. Credits must be made to the same Card account number on which the original sale Transaction was processed. Credits may only be issued when a balance in the Merchant's Bank Account exists equal to or greater than the credit. Any change in Merchant's return or cancellation policy must be submitted in writing to Bank and ISO not less than 14 days before the change being implemented.

**2.7 Merchant's Business.** Merchant shall provide Bank and ISO with immediate notice of its intent to (a) transfer or sell any substantial part of its total assets, or liquidate; (b) change the basic nature of its business, including selling any goods or services not related to its current business; (c) change ownership or transfer control of its business; (d) enter into any joint venture, partnership, or similar business arrangement whereby any person or entity not a party to this Agreement assumes 25% or more of the equity interests of Merchant's business; (e) process Transactions through any URL not already disclosed to ISO as required under Section 2.17; or (f) alter in any way Merchant's monthly volume and average ticket. (Merchant's monthly volume commitment under this Agreement shall be as stated in the Agreement Term & Commitment section of the Merchant Application. If no volume commitment is specified, then the volume commitment shall be 100 percent.) Merchant may not make such intended change without the prior approval of Bank and ISO. Failure to provide notice as required above may be deemed a material breach of this Agreement, or, at Servicer's option, Servicer may take actions deemed necessary to protect against financial loss including holding funds and altering the Merchant funding schedule. Merchant must notify Bank and ISO in writing of any changes to the information in the Merchant Application or any additional location or business. Merchant must also notify Bank and ISO in writing if Merchant sells or closes its business. Bank and ISO must receive all such notices seven days before the change takes effect. Merchant is liable to Servicer for all losses and expenses incurred by Servicer arising out of Merchant's failure to report changes. Servicer may immediately terminate this Agreement upon a change to the information in the Merchant Application.

**2.8 Use of Marks.** Merchant is prohibited from using the Program Marks other than as expressly authorized in the Rules or in writing by Bank. Merchant recognizes and agrees that each Card Brand is the sole owner of its respective Program Marks and Merchant agrees not to contest the ownership of any Program Marks or act in a way which would injure or create a risk of injury to any Card Brand or its intellectual property rights. Merchant shall not use the Program Marks in a way that customers could believe that the products or services offered by Merchant are sponsored or guaranteed by the owners of the Program Marks. Merchant shall immediately remove all Program Marks from Merchant's website and wherever else they are displayed, cease all use of all Program Marks, and return any inventory to Servicer upon any termination of the Agreement or upon the request of Servicer or the Card Brands. Merchant shall be fully liable to Servicer for any and all losses, costs, and expenses suffered or incurred by Servicer arising out of Merchant's failure to comply with this Section. Servicer may require changes to Merchant's website or systems that it deems necessary or appropriate to require Merchant to remain compliant with the Rules but Merchant is responsible for ensuring its compliance with the Rules.

**2.9 Prohibited Activity.** Merchant agrees that its engagement in any prohibited conduct shall be a material breach of this Agreement.

(a) Personal Information. Except as permitted by the Rules, Merchant may not impose a requirement on Cardholders to provide any personal information as a condition for honoring Cards unless such information is required to provide delivery of goods or services. Merchant must not contact Cardholders except as required and permitted by the Rules.

(b) Cash Payments. Merchant shall not receive any payment from a Cardholder to prepare and present a Transaction for the purpose of affecting a deposit to the Cardholder's Card account.

(c) Cash Advances. Merchant shall not submit any Transaction for the purpose of obtaining or disbursing funds in the form of cash unless Merchant is (i) a financial institution duly licensed under the Rules to provide cash advances; (ii) dispensing funds in the form of travelers cheques, Visa TravelMoney Cards, or Foreign Currency (in which case the Transaction amount is limited to the value of the travelers cheques, Visa TravelMoney Card, or Foreign Currency plus any commission or fee charged by Merchant); or (iii) is participating in the Visa Cash Back Service. Outside of test Transactions not to exceed \$25.00 in aggregate, Merchant shall not obtain, under any circumstance, Authorization for a Transaction on any Card that Merchant is authorized to use as Cardholder.

(d) Duplicate Transactions. Merchant shall not submit duplicate Transactions. Merchant shall be debited for any duplicate Transactions and shall be liable for any resulting Chargebacks. Merchant shall not submit a transaction that was previously disputed and then returned to the Merchant (however, Merchant may pursue payment from the customer outside the Card Brand systems).

(e) Fraudulent, Illegal, and Unauthorized Transactions. Merchant shall not accept or submit any Transaction which Merchant knows or should have known to be fraudulent or not authorized by the Cardholder, or that Merchant knows or should have known to be authorized by a Cardholder colluding with the Merchant for a fraudulent purpose. Merchant shall not accept or submit, directly or indirectly, any Transaction that originated with any source other than Merchants' legitimate customers or any Transaction that is illegal or that Merchant should have known was illegal; Merchant shall not engage in transaction laundering (factoring). Merchant shall not submit any sales Transaction solicited by a telemarketer absent prior written approval from Servicer. Merchant shall not submit Transactions on behalf of another person or entity. Merchant shall not submit Transaction for its locations other than those locations in the United States. Transactions must be legal in both the Cardholder's and the Merchant's jurisdictions. Where permitted by law, Merchant shall include in its privacy policy a disclosure that Cardholder's billing and shipping addresses and other Cardholder information is collected by Servicer and shared with the Card Brands for Card transactions that are confirmed by Merchant as, or suspected to be, fraudulent.

(f) Collection of Pre-Existing Debt. Merchant shall not present any Transaction representing the refinancing or transfer of an existing obligation or debt of a Cardholder including but not limited to obligations: (i) deemed to be uncollectible; (ii) arising from the dishonor of a Cardholder's personal check; or (iii) representing the collection of delinquent accounts on behalf of third parties. For Merchants that have a principle business of collecting debts and that have advised ISO of such business on the Merchant Application ("Debt Repayment Merchants"), the repayment of debt is subject to the following limitations. Debt Repayment Merchants must only submit debt repayment Transactions for loans that adhere to the Rules. Any interest, finance charges, and fees assessed on such loans must also adhere to the Rules. Debt Repayment Merchants are prohibited from using a credit Card or charge Card for debt repayment Transactions. Debt Repayment Merchants are prohibited from collecting debt that exceeds the statute of limitations and is no longer collectible in a lawsuit, unless the Debt Repayment Merchant obtains written Cardholder agreement of the charge and the amount. A Debt Repayment Merchant may only collect debts that have been charged-off and

transferred from the original owner to a third party if the Debt Repayment Merchant is a regulated financial institution. Debt Repayment Merchants must not accept payments for debt that represents a loan that the consumer is required to repay within 60 days and the total amount paid by the consumer to extinguish the debt substantially exceeds the original amount borrowed, including payday loans. Debt Repayment Merchants must include the debt repayment indicator in the Authorization request and clearing record. A Debt Repayment Merchant that receives a decline response for a debt repayment Transaction may not resubmit for Authorization if the Transaction has already been submitted 3 times with each retry resulting in a decline response after more than 14 calendar days from the date of the original decline response or if otherwise prohibited by the Rules.

(g) Multiple Transaction Records: Partial Consideration. All goods and services purchased in a single Transaction must be included in one total amount on a Transaction Receipt or other Transaction record with these exceptions: (i) if the Transaction record and receipt reflects only the portion of the purchase to be paid by means of a Card; or (ii) if Merchant individually bills the goods or services in separate Transactions to the same Card in accordance with the acceptance procedures.

(h) Revocation of Authority. Merchant shall cease the initiation of Card activity immediately upon receipt of actual or constructive notice of a Cardholder's termination or revocation of Merchant's authorization to do so.

(i) Cardholder and Transaction Data. Merchant shall not use any Cardholder data or other Transaction data for any purpose not authorized by this Agreement. Any use, storage, or disclosure by the Merchant of Cardholder or Card Brand confidential information or Card Transaction information other than as necessary to complete a Card Transaction is prohibited.

(j) Unfair Practices. Merchant shall not engage in any service or activity that is deceptive, unfair, predatory, or prohibited by one or more Card Brand, or that represents a violation of the Rules.

(k) Harm. Merchant shall not engage in any activity that may result in undue economic hardship or damage to the goodwill or reputation of ISO, Bank, or any Card Brand.

(l) Chargebacks. Merchant shall not have excessive chargebacks as defined by the Rules. Merchant shall not submit any Transaction to Servicer that was previously charged back and subsequently returned to the Merchant, irrespective of Cardholder approval.

(m) Claims Against Cardholder. Merchant shall not have any claim against, or right to receive payment from, a Cardholder unless Servicer refuses to accept the Transaction Receipt. Merchant will not accept any payments from a Cardholder relating to previous charges for goods or services included in a Transaction Receipt.

(n) Prepayment. Merchant shall not present any Transaction to Servicer until after the goods are shipped or provided to Cardholder, or the services are performed, or the Merchant has completed the Transaction, unless the Merchant has obtained Cardholder consent in accordance with the Rules.

(o) Goods/Services. Merchant shall not present any Transaction to Servicer for the sale of goods or services that have not been disclosed on the Merchant Application unless otherwise agreed to in writing by Servicer. Merchant shall not accept or present any Transaction to Servicer that involves counterfeit goods or any goods or services that infringe on any patent, trademark, copyright, or any other intellectual property right of any person.

**2.10 Representations and Warranties of Merchant.** Merchant represents and warrants to Bank and ISO at the time of execution and at all times during the term of this Agreement that: (a) all information contained in the Merchant Application or any other documents delivered to Servicer is true and complete; (b) Merchant has the power to execute, deliver, and perform this Agreement, and this Agreement is duly authorized, and does not and will not violate any provisions of federal or state law or regulation, or conflict with any other agreement to which Merchant is subject; (c) Merchant has all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; (d) there is no circumstance threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations; (e) each Transaction presented to Servicer for collection is genuine and is not the result of any fraudulent or prohibited Transaction and is not being deposited on behalf of any business other than Merchant; (f) each Transaction is the result of a bona fide Card Transaction for the direct purchase of goods or services by the Cardholder in the total amount stated on any Transaction Receipt, and will be free of liens, claims, and encumbrances other than ordinary sales taxes; (g) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card Transaction evidenced thereby; (h) Merchant has complied with Servicer's procedures for accepting Cards, and the Card Transaction does not involve any element of credit or debit for any purpose other than as set forth in this Agreement and shall not be subject to any defense, dispute, offset, or counter claim which may be raised by any Cardholder under the Rules, the Consumer Credit Protection Act (15 USC §1601) or other relevant state or federal statutes or regulations; (i) any Credit Voucher which it issues represents a bona fide refund or adjustment on a Card sale with respect to which a Transaction has been accepted; (j) neither Merchant, its principals, nor any entity controlled by Merchant's principals have ever had credit card processing services terminated for any reason set forth in the Rules or been reported to MATCH or any other terminated merchant file of any Card Brand; (k) for all Transactions that Merchant requests Servicer to originate, Merchant continuously represents and warrants to Bank and ISO that: (1) Each Cardholder has authorized the debiting and crediting of its account; (2) each Transaction is for an amount the customer has agreed to; (3) the Transaction amount does not contain tax amounts unless they are required by applicable law, in which case the tax amount must be included in the Transaction amount and not collected separately; and (4) each Transaction is in all other respects properly authorized.

#### 2.11 Merchant Covenants.

(a) Error in Information. Merchant agrees that it has the sole responsibility and full liability related to providing Servicer accurate Cardholder information. Merchant shall immediately notify Bank and ISO if it becomes aware of any error in such information.

(b) Change in Status. Merchant shall immediately notify Bank and ISO of any event that has or could cause material changes in the Merchant's ability to fulfill its obligations under this Agreement, including but not limited to adverse changes in Merchant's financial health or business conditions, or actions against Merchant by any governmental or non-governmental agencies.

(c) Notice of Erroneous/Unauthorized Transfers and Fees. Merchant shall regularly and promptly review all statements of account related to its processing account. Merchant agrees to immediately notify Bank and ISO of any discrepancy between Merchant's records and those provided by Servicer, the Merchant's bank, or with respect to any transfer that Merchant believes was not authorized by Merchant or Cardholder or any fee that was charged to the Merchant by Servicer. If Merchant fails to notify Bank and ISO of such error or discrepancy in writing within 30 calendar days from the date that Servicer mails or provides a statement of account or other report to Merchant, Merchant will be solely responsible for all losses or other costs associated with any erroneous or unauthorized transfer

or disputed fees and waives any and all claims against Bank and ISO.

**2.12 Guarantors.** As a primary inducement for Bank and ISO to enter into this Agreement, the Guarantors, by signing this Agreement, as principal obligors and not merely as sureties, hereby jointly and severally, unconditionally and irrevocably, guarantee to Bank and ISO the continuing full and faithful performance and payment of each of Merchant's duties and obligations to Servicer pursuant to this Agreement, as it now exists or is amended from time to time, with or without notice, including but not limited to all monetary obligations arising out of Merchant's performance or non-performance under this Agreement, whether arising before or after termination of this Agreement. Guarantors agree that whenever Merchant does not pay any of the obligations as and when they fall due, Guarantors shall promptly pay such obligations to Servicer upon written demand made upon Guarantors by Servicer. Guarantors understand that Servicer may proceed directly against one or more Guarantors without first exhausting its remedies against any other responsible person or entity or any security held by Servicer or Merchant. This guaranty shall not be discharged or otherwise affected by any waiver, indulgence, compromise, settlement, extension of credit, or variation of terms of the merchant Agreement made by or agreed to by any of the parties. This guaranty is an absolute, unconditional, and continuing guaranty of the full and punctual payment and performance of the obligations and not of their collectability only. This guaranty will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives, and assigns and may be enforced by or for the benefit of any successor of Bank or ISO. Guarantors understand that the inducement to Bank and ISO to enter into this Agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantors receive no additional benefit from the guaranty. This guaranty is freely and voluntarily given, and Guarantors recognize that Servicer would not enter into this Agreement without such guaranty. Neither ISO nor Bank shall be required to, and Guarantors hereby waive, to the fullest extent permitted by law, any right to require ISO or Bank to first proceed against Merchant, resort to any other security, or enforce any other remedy before proceeding against the undersigned Guarantors. The liability of each Guarantor hereunder shall in no way be affected or impaired by any acceptance by Bank or ISO of any direct or indirect security, any failure, delay, neglect, omission, approval consent, waiver or other action taken, or omitted to be taken by ISO or Bank. Guarantors waive, to the fullest extent possible under law, any notice of acceptance of this guaranty, notice of nonpayment, or nonperformance of any provision of the Agreement by Merchant by all other notices or demands regarding the Merchant Agreement, and the defense of forum non conveniens. Guarantors agree to promptly provide to ISO and Bank any information requested by any of them from time to time concerning Guarantors' financial conditions, business history, and employment information. Guarantors agree that notice may be provided to each Guarantor by personal delivery or sending such by nationally recognized overnight carrier, registered or certified mail, postage prepaid, to Merchant's address; provided that such address may be modified by Guarantor upon sending written notice to Bank and ISO of such modified address by certified mail. If any portion of this guaranty is determined to be invalid, illegal, or unenforceable, such provision shall remain enforceable to the fullest extent permitted by law and the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired.

**2.13 Monthly Volume, Average Ticket, and High Ticket.** Merchant represents that the Estimated monthly volume of Sales Transactions ("Monthly Volume") and the estimated average Sales Transaction dollar amount ("Average Ticket Amount") appearing on the Merchant Application are each good faith estimates and that there is a reasonable basis for each such estimate. Merchant acknowledges that any actual Monthly Volume or any actual Average Ticket Amount in excess of such estimates will cause Servicer to review Merchant's file and may result in the delay of transmission of funds and interruption of service. Bank may withhold the payment of any amounts otherwise payable hereunder and may terminate this Agreement if the actual Monthly Volume or Average Ticket Amount materially exceed such estimates. Servicer may impose a cap on the dollar amount of Transactions that it will process for Merchant. This limit may be changed by Servicer from time to time upon notice to Merchant. Such notice may be given orally or in writing. If Merchant exceeds the established cap, then Servicer may suspend processing, hold the funds over the cap, and return all Transactions evidencing funds over the cap to Merchant.

**2.14 Volume Commitment.** Merchant agrees to submit the greater of the following to Servicer on a monthly basis: (a) the Volume Percentage of Merchant's total Transaction dollar volume acquired in the United States, as stated in the Merchant Application, or (b) the Volume Percentage of any processing limit imposed by Servicer that is below the Merchant's total Transaction dollar volume acquired in the United States (the "Volume Commitment"), unless an exception is approved in writing by Servicer. If Merchant does not meet the Volume Commitment for any month, Merchant shall be immediately liable to Bank and ISO for the processing fees, less Interchange Fees, that would have otherwise been assessed on the shortfall to the Volume Commitment.

**2.15 Confidential Information.** Merchant acknowledges that Servicer will be providing Merchant with certain confidential and proprietary information, including but not limited to, this Agreement, Cardholders, and information relating to the finances, systems, methods, techniques, programs, devices, and operations of Servicer or the Card Brands ("Confidential Information.") Merchant shall not disclose any Confidential Information to any person or entity (other than to those employees of Merchant who participate directly in the performance of this Agreement and need access to such information). Without limiting the foregoing, Merchant agrees that it will fully comply with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule, or regulation), and the Card Brands. Merchant acknowledges that the injury that would be sustained by Servicer as a result of Merchant's violation of this Section cannot be compensated solely by money damages, and agrees that Servicer shall be entitled to injunctive relief and any other remedies as may be available at law or in equity in the event of Merchant's violation of the provisions contained in this Section. The restrictions contained in this Section shall not apply to any information which becomes a matter of public knowledge, other than through a violation of this Agreement or other agreements between the parties.

**2.16 Access.** If Merchant receives access codes or user IDs with passwords ("Access Codes") from ISO to access one or more of ISO's systems, Merchant will utilize the same degree of care in protecting the secrecy of the Access Codes that Merchant uses to protect its own confidential or proprietary information, but in no event less than a commercially reasonable degree of care. Merchant will not allow any other entity or person to use the Access Codes or gain access to ISO's systems. Merchant will implement and maintain systems to ensure that Access Codes are distributed only to those officers, directors, or employees of Merchant that have a need to access ISO's systems in connection with this Agreement. Merchant is liable for all action taken by any user of the Access Codes. Merchant will only use Access Codes and ISO's systems for their intended purposes and will promptly notify ISO if Merchant believes the confidentiality of the system's data or any sensitive information has been compromised. The Access Codes are the property of ISO. Merchant shall

maintain reasonable safeguards and security systems sufficient to protect Access Codes and all Confidential Information contained in or accessed by Merchant via any Access Code, and shall ensure that all such data and information is protected by Merchant behind firewalls or on servers inaccessible to third parties. Merchant shall immediately notify ISO in writing upon the occurrence of a breach of its obligations set forth in this Section. Upon termination of access to the ISO systems, the respective Access Codes shall be rescinded, Merchant shall not be permitted to use the respective service, and all rights, licenses, and sublicenses granted with respect to such service, whether real or implied, shall be terminated. Merchant acknowledges that its access to ISO's systems does not convey to ISO any right, title, interest, or copyright therein or any license to use, sell, exploit, copy, or develop them further. Notwithstanding anything in this Agreement to the contrary, ISO may automatically terminate Merchant's access to the ISO systems without penalty upon the earlier of: (a) the termination or expiration of this Agreement; or (b) the occurrence of any event causing ISO to cease providing Merchant access to ISO's systems. ISO DOES NOT MAKE AND HEREBY EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT ACCESS TO ISO SYSTEMS WILL BE UNINTERRUPTED OR ERROR FREE, THAT SECURITY BREACHES WILL NOT OCCUR WITH RESPECT TO INFORMATION COMMUNICATED THROUGH ANY ISO SYSTEM, THE INTERNET, OR COMMON CARRIER COMMUNICATIONS FACILITY, AND AS TO THE RESULTS THAT MAY BE OBTAINED IN CONNECTION WITH USE OF THE ISO SYSTEMS. ISO SHALL NOT HAVE ANY LIABILITY OF ANY KIND TO MERCHANT WITH RESPECT TO USE OF ISO SYSTEMS OR ANY INFORMATION OBTAINED THEREFROM. IF ANY OF THE TRANSACTIONS ON ISO'S SYSTEM BELONGING TO MERCHANT ARE SUBPOENAED BY LEGAL PROCESS OR OTHERWISE, ISO SHALL USE REASONABLE EFFORTS TO NOTIFY MERCHANT. IF MERCHANT DOES NOT RESPOND IN A TIMELY MANNER ISO MAY PRODUCE RECORDS IN ACCORDANCE WITH THE SUBPOENA.

**2.17 Web Processing.** Merchant shall disclose to Bank and ISO all URLs for which Merchant processes Transactions or otherwise accepts payments at the time of executing this Agreement, upon request, and before processing through any URL not previously disclosed.

**2.18 Audits.** Merchant shall allow auditors, including the auditors or representatives of any Card Brand, Servicer, or any third party designated by Card Brands or Servicer to review, inspect, audit, and make copies of Merchant's books, accounts, records and files pertaining to any Card Transaction and the procedures followed by Merchant at any or all of Merchant's establishments, offices, or places of business at Merchant's expense. ISO agrees that if it conducts an audit which is not required by the Rules or that is not requested by Bank, Card Brands, or a regulatory agency, such audit will be at ISO's sole expense; provided that if ISO's audit reveals any violations of this Agreement or the Rules, Merchant shall be responsible for the expense of the audit. Merchant will assist such auditors as may be necessary for them to complete their audit. In the event that a third-party audit is requested by a Card Brand, Bank, or regulatory agency, or required by the Rules, ISO may, at its option, and at Merchant's sole expense, either retain a third party to perform the audit or require that Merchant directly retain a specific third-party auditor. If ISO requires that Merchant directly retain the auditor, Merchant shall arrange immediately for such audit to be performed, and will provide ISO, Bank and the Card Brands with a copy of any final audit report.

**2.19 Tax ID Numbers.** Merchant agrees, represents, and warrants that its tax identification number ("TIN") provided on the Merchant Application, is true and correct and is the same TIN Merchant uses to file its tax returns. In the event that Merchant changes its TIN, it agrees to immediately update Bank and ISO regarding any new TIN it uses to file its tax returns. Merchant acknowledges that Servicer may be obligated to provide certain information about Merchant to government entities, including without limitation Merchant's name, DBAs, TIN, processing volume, and principals' social security number(s). Merchant agrees to release and indemnify Bank and ISO from any claims, liability, damages, and losses, including penalties and fines and attorneys' fees, that result from the information Merchant provided in the Merchant Application (including without limitation its TIN) being incorrect or not complying with its representations in this Section. In accordance with the Internal Revenue Code, Servicer may be required to perform backup withholding of amounts due to Merchant by deducting and withholding income tax from its reportable Transactions if: (a) Merchant fails to provide its TIN; or (b) if the IRS notifies Servicer that the TIN is incorrect.

### ARTICLE III - PRESENTMENT, PAYMENT, CHARGEBACK; TYPES OF TRANSACTIONS

**3.1 Acceptance.** Servicer shall accept from Merchant all valid Transactions submitted by Merchant in accordance with this Agreement and present the same to the appropriate Card Issuers for collection against Cardholder accounts. All presentment and assignment of Transactions, collection therefore, and re-assignment or rejection of Transactions are subject to the terms of this Agreement and the Rules. Servicer shall only provisionally credit the value of collected Transactions to the Bank Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks, fees, assessments, late submission charges, reserve deposits, and items for which Bank did not receive final payment. Settlement of funds will be in United States Dollars. Servicer may refuse to accept any Transaction or revoke its prior acceptance in the following circumstances: (a) the Transaction was not made in compliance with any terms of this Agreement or the Rules; (b) the Cardholder disputes his liability to Bank or Issuing Bank for any reason; or (c) the Transaction was not directly between Merchant and the Cardholder. Merchant will pay Servicer, as appropriate, any amount previously credited to Merchant for a Transaction not accepted or later revoked by Servicer. Merchant agrees that Servicer may disclose detailed information about Transactions, individually and in the aggregate, and other information relating to Merchant to third parties that, in Servicer's discretion, require the information to facilitate the Services described in this Agreement, or as requested by regulatory authorities. Without limiting the foregoing, Merchant agrees that Servicer may disclose to the Card Brands information regarding Merchant, Merchant's sales, and Servicer's experience with Merchant in connection with Card acceptance Merchant further agrees that the Card Brands may use such information to perform their responsibilities in connection with Card acceptance, promote the Card Brands, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes within the parameters of Card acceptance, and transactional or relationship communications from the Card Brands. The Card Brands may use the information about Merchant obtained in this Agreement at the time of setup to screen and monitor Merchant in connection with Card Brand marketing and administrative purposes. Merchant agrees it may receive messages from Card Brands, including information about Card Brand products, services, and resources available to its business. These messages may be sent to the mailing address, phone numbers, email addresses or fax numbers of Merchant. Merchant may be contacted at its wireless telephone number and the communications sent may include autodialed short message service (SMS or "text") messages or automated or prerecorded calls. Merchant agrees that it may be sent fax

communications. Merchant may opt-out of receiving commercial marketing communications from the Card Brands by contacting Servicer. Merchant may continue to receive marketing communications while the Card Brands updates their records to reflect this choice. Opting out of commercial marketing communications will not preclude Merchant from receiving transactional or relationship messages from the Card Brands.

**3.2 Endorsement.** The processing of Transactions from customers is Merchant's agreement to sell and assign its right, title, and interest in each Transaction completed in conformity with Bank and ISO's acceptance procedures and shall constitute an endorsement by Merchant to Bank and ISO of such Transactions. Merchant hereby authorizes Servicer to supply such endorsement on Merchant's behalf. Merchant agrees that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Sec. 365, as amended from time to time. Merchant acknowledges that its obligation to Servicer for all amounts owed under this Agreement arise out of the same transaction as Bank's obligation to deposit funds to the Bank Account.

**3.3 Transmission Method.** Information regarding a sale or credit Transaction transmitted with a computer or magnetic stripe/EMV reading terminal will be transmitted by Merchant as designated by Servicer in the form specified by Servicer. The means of transmission indicated in the Merchant Application shall be the exclusive means used by Merchant until Merchant has provided ISO with at least 30 days prior written notice, with a copy to Bank, of Merchant's intention to change the means of such delivery or otherwise alter in any material respect Merchant's medium of transmission of data. Servicer shall have the right to refuse and cancel the Agreement upon such notice.

**3.4 Prohibited Payments.** Servicer shall have the sole right to receive payment of any Transaction presented by Merchant and paid by Bank unless and until there is a Chargeback. Unless specifically authorized in writing by Bank, Merchant shall not make or attempt to make any collections from Cardholders on any Transaction, including Chargebacks, yet shall promptly deliver to Bank any payment Merchant receives, in whole or in part of the amount of any accepted Transaction, together with the Cardholder's name and account number, and any documents accompanying the payment.

**3.5 Chargebacks.** Contemporaneously with each Cardholder Transaction, a contingent and unmaturing claim for Chargeback accrues against Merchant in favor of Servicer to the extent Servicer is required, or exercises its right, to pay to the Card Brands with respect to any fees, discounts, customer credits, adjustments, charges, fines, assessments, or other items, which may in turn be charged back to Merchant by Servicer. Merchant agrees that it is fully liable to Servicer for all Chargebacks, and that Servicer is authorized to offset from incoming transactions and to debit via ACH the Bank Account, the Reserve Account, or any other account held by Merchant at any other financial institution in the amount of any Chargeback. Merchant may not bill or attempt to collect from any Cardholder for any Card sale unless a Chargeback has been exercised, Merchant has fully paid for such Chargeback, and Merchant otherwise has the right to do so. If Merchant is identified in a Card Brand Chargeback program, ISO shall charge Merchant a \$2,500.00 fine and any costs for Servicer to complete its responsibilities relative to the identification. If Merchant's Chargeback Ratio (the number of Chargebacks divided by the total number of sales) is higher than four percent in any three-month period, then Servicer shall charge Merchant a \$50.00 Excessive Chargeback per item surcharge in addition to standard Chargeback fees. Merchant may challenge a Chargeback, however, Merchant will remain liable for any such Chargeback if Merchant's challenge is not successful. Notwithstanding the foregoing, Merchant agrees to accept any Chargeback where the Cardholder disputes the validity of the sale Transaction according to the Rules. Merchant also agrees to accept liability for any Transaction if Servicer determines that Merchant has in any way failed to comply with the Rules, Servicer's procedures, this Agreement, or Servicer determines that the Transaction record is fraudulent or that the Transaction is not bona fide or is subject to any claim of illegality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including without limitation negligence, fraud, or dishonesty on the part of Merchant or Merchant's agents or employees. Guarantors are personally liable for all Chargebacks. In the event Merchant sells its business and the new owner incurs Chargebacks, the original Merchant and all guarantors will continue to be held liable for such Chargebacks and any other liabilities of the new owner.

**3.6 Third-Party Assessments.** Notwithstanding any other provision of this Agreement, Merchant shall be responsible for all amounts imposed or assessed to Merchant, Bank, and ISO in connection with this Agreement by third parties including but not limited to any Card Brand or Service Provider (including telecommunication companies). Such amounts include but are not limited to fees, fines, assessments, loss allocations, etc. Any changes or increases in such amounts shall automatically become effective upon notice to Merchant and shall be immediately payable by Merchant when assessed by Servicer. Guarantors are personally liable for all third-party assessments.

#### 3.7 Types of Transactions.

(a) General. Merchant shall not (i) request or use an account number for any purpose that is not related to payment of goods and services; (ii) store or reproduce the signature of a Cardholder other than for the transaction for which it was obtained; or (iii) request a CVV2 from the Cardholder for a card-present transaction. Merchant shall display on the payment screen and all screens that show account information both the last four digit of the account number and the Program Mark or Card Brand name in text immediately next to a Card Brand payment option.

(b) Telephone, Mail, and Internet Transactions. Merchant must display on its website: (i) its name, as it will appear on the Cardholder statement, as prominently as any other information depicted on the website, other than images of the goods or services being offered; (ii) a consumer data privacy policy; (iii) a policy for transmission of Card details; and (iv) the address of its permanent establishment. For approved mail, telephone, and internet orders, Merchant shall ensure the creation of a Transaction record that contains Cardholder data, the expiration number of the Card, an Authorization number, the sale amount and a record of the origination method, as appropriate; AVS, CVV2, "Visa Secure" or similar Card Brand verification tools required under the Rules. Such verification efforts are not guarantees of payment, and the use of those techniques will not waive any provision of this Agreement or otherwise validate a fraudulent Transaction. If Merchant does not receive a positive match through AVS where required, then the Transaction cannot be processed through the Discover Network Card or other similar Card Brand Card Not Present Transaction. Merchant should contact ISO immediately if it does not have AVS capability. For internet Transactions using Visa or Mastercard cards, settlement or Transaction records must have special codes (an "Electronic Commerce Indicator"). If Merchant uses a third party encryption vendor, such vendor must be approved by Bank and ISO. Merchant is solely responsible for managing the Internet telecommunications link. Merchant may not require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, Card expiration date, signature, or any other Card account data in plain view when mailed. Merchant may not request the Card Verification Value 2 (CVV2) data on any paper order form (either written or electronic).

(c) Transactions Using a Stored Credential Recurring Transactions; Preauthorized, Installments

Orders. When capturing a Stored Credential for the first time, the Merchant must establish an agreement with the Cardholder that includes: A truncated version of the Stored Credential (i.e., the last 4 digits of the Card number), as it may be updated from time to time; how the Cardholder will be notified of any changes to the agreement; how the Stored Credential will be used; and the expiration date of the agreement, if applicable. Before processing an Installment Transaction, a Recurring Transaction, or an unscheduled Stored Credential Transaction, Merchant must obtain the Cardholder's express informed consent to an agreement that includes: the Transaction amount (including taxes and charges); the Transaction currency; an acknowledgement of any surcharge assessed and the associated disclosures where surcharging is permitted; Merchant's cancellation and refund policies; and Merchant's location. For Installment Transactions, the agreement must include the total purchase price and the terms of future payments including dates, amounts, and currency. Merchant must legibly print "Installment Transaction" on the Transaction Receipt. For Recurring Transactions, the agreement must include the fixed dates or intervals on which the Transactions will be processed. Merchant must legibly print "Recurring Transaction" on the Transaction Receipt. For unscheduled Stored Credential Transactions, the agreement must disclose to the Cardholder the event or occurrence that will prompt the charge of the Cardholder's Card (i.e., if Cardholder's balance falls below a certain amount). Merchant must maintain its agreement with the Cardholder for the duration of the agreement and provide it to Servicer upon request. Merchant will not complete any Installment Transaction, Recurring Transaction, or Stored Credential Transaction after: (i) receiving a cancellation notice from the Cardholder; (ii) receiving notice from Servicer that authority to accept recurring Transactions has been revoked; or (iii) receiving a response that the Card is not to be honored. Merchant must comply with all Rules governing Installment Transactions, Recurring Transactions, or unscheduled Stored Credential Transactions.

(d) Lodging and Vehicle Rental Transactions. Merchants engaged in lodging and vehicle rental Transactions may submit an authorized Transaction at the time of check-in. Additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. Regardless of the terms and conditions of any written preauthorization form, the Transaction amount for any lodging or vehicle rental Transaction shall include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to the Cardholder and shall not include any consequential charges. Hotels, motels, and car rental merchants are allowed up to a 15% variance (20% for some pre-authorization establishments) above the amount authorized. If the final amount charged to Cardholder exceeds the original estimate by more than 15% above the preauthorization, Merchant must authorize any additional amounts and all incremental authorization codes must be written in the authorization area along with the amount. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction. When submitting the first authorization request, the Merchant must inform the Cardholder that the authorization request is not final and that there may be subsequent authorization requests and the amount of the estimated authorization request. Merchants engaged in lodging and vehicle rental Transactions shall not include an amount to cover potential damage or an insurance deductible.

(e) Multiple Transactions. Merchant will include a description and total amount of goods and services purchased in a single sales Transaction on a single Transaction Receipt or Transaction record unless: (i) partial payment is entered on the Transaction Receipt or Transaction record and the balance of the Transaction is paid in cash or by check at the time of Transaction; or (ii) a Transaction represents an advance deposit or partial prepayment in a Card Transaction completed in accordance with this Agreement and the Rules.

#### ARTICLE IV - TERMINATION AND EFFECT OF TERMINATION

##### 4.1 Term and Termination.

(a) Term. This Agreement shall become binding upon acceptance by Bank as of Effective Date. The initial term of this Agreement shall be for the period of time specified in the Agreement Term section of the Merchant Application, beginning on the Effective Date ("Initial Term"). If no Agreement Term is specified in the Agreement Term section of the Merchant Application, then the Agreement Terms shall be 24 months. The Initial Term will automatically renew for successive renewal terms for the same time period as the Initial Term ("Renewal Term") unless any party provides written notice to the other parties of its decision not to renew at least 90 days before the expiration of the then-current term (the Initial Term or the current Renewal Term).

(b) Automatic Termination. This Agreement may be terminated by Servicer or any of the Card Brands at any time without notice to Merchant if they reasonably believe that Merchant has or is about to create harm or loss of goodwill to Servicer or a Card Brand. Additionally, the Card Brands, or Servicer at the request of the Card Brands, may terminate this Agreement, or instruct Servicer to terminate this Agreement, at any time, without notice, for no reason.

(c) Termination for Cause. Merchant may terminate this Agreement in the event of a material breach of the terms of this Agreement by Bank or ISO, provided that Merchant provides the breaching party with written notice of the alleged breach and the breach remains uncured for a period of 120 days following receipt of written notice by the breaching party. Merchant may terminate this agreement without penalty within 30 days of a fee increase or a new fee only if the fee increase or new fee is not passed through from the Card Brands. Bank or ISO may immediately terminate this Agreement upon written notice (i) in the event of a material breach of the terms of this Agreement by Merchant; (ii) if Merchant breaches any Card Brand Rule, including the American Express Merchant Operating Guide; or (iii) as a response to any fraud or suspected fraud. Merchant agrees to notify Bank and ISO immediately of any bankruptcy, receivership, insolvency, or similar action initiated by or against Merchant or any of its principals. Merchant will include Bank and ISO on the list of creditors filed with the Bankruptcy Court, whether or not a claim exists at the time of filing. Any party may immediately terminate this Agreement upon written notice if another party: (i) has knowingly made any untrue material representations herein or in documents provided under this Agreement; or (ii) becomes insolvent, is placed in receivership, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts, or seeks relief or has a petition filed against it under any provision of the Federal Bankruptcy Code. Servicer's rights of termination provided throughout this Agreement are cumulative. A specific right of termination enumerated in this Agreement shall not limit any other right of Servicer to terminate this Agreement expressed elsewhere in this Agreement.

##### 4.2 Effect of Termination.

(a) In the event of termination for any reason, Merchant expressly authorizes Servicer to withhold and discontinue the disbursement of funds for all Cards and other payment Transactions of Merchant in the process of being collected and deposited.

(b) Any collected funds that are not funded to Merchant immediately will be placed in the Reserve Account until all fees, charges, losses, assessments, Chargebacks, or other amounts for which Merchant is liable under this Agreement have been paid and all contingent liabilities associated with

Merchant have expired or been resolved. Further, Servicer reserves the right to require Merchant to deposit additional amounts into the Reserve Account based upon Merchant's processing history or anticipated risk of loss to Servicer. The provisions of this Agreement relating to the debiting and crediting of the Bank Account shall be applied to the Reserve Account and shall survive termination of this Agreement. Any balance remaining after Chargeback rights have expired and all other expenses, losses, fees, assessments, and damages have been paid will be disbursed to Merchant.

(c) Merchant acknowledges and agrees that Servicer is required to report the business name of Merchant and the names and identification of its principals to MATCH and any other terminated merchant files of any other Card Brand in the event the Services are terminated for any reason set forth in the Rules. Merchant consents to such reporting to the Card Brands by Servicer. Merchant agrees that it will hold Bank and ISO harmless for all such reporting.

(d) Upon termination for any reason, Merchant will immediately cease requesting Authorizations and will cease transmitting Transactions to Servicer. In the event Merchant obtains any Authorization after termination, Merchant expressly acknowledges and agrees that the fact that any Authorization was requested or obtained shall not operate to reinstate this Agreement. Merchant will immediately cease use of all Program Marks.

(e) Following termination, Merchant shall, upon request, provide Servicer with all Transaction Receipts and Credit Vouchers to be retained as of the date of termination.

(f) Upon termination any amounts due to Servicer will accelerate and be immediately due and payable, including without limit any fees that would have accrued for the remaining term, the Termination Fee as specified in the Merchant Application, and any fees related to the Volume Commitment for the greater of the Anticipated Monthly Volume in the Merchant Application or the actual volume processed by the Merchant for each month remaining in the term of the Agreement without any notice, declaration, or other act whatsoever by Servicer.

(g) Merchant will return all of Servicer's property, materials, supplies, forms, equipment, Confidential Information, and Access Codes.

#### ARTICLE V - ACCOUNTS; SECURITY INTERESTS; INDEMNIFICATION

**5.1 Account Monitoring.** Merchant acknowledges that ISO will monitor Merchant's daily Transaction activity. Merchant agrees that Servicer may suspend, within its sole discretion, the disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual activity. Servicer will make commercially reasonable efforts to notify Merchant promptly following suspension. Neither Bank nor ISO shall have any liability for any losses or claims, either direct or indirect, which Merchant may attribute to any suspension of funds.

**5.2 Requests for Information.** Within three days of receipt of any request by Servicer, Merchant shall provide a copy of all Transaction Records and any other documentary evidence available to Merchant. Servicer may require additional information about Merchant or Merchant's procedures for accepting Cards. Merchant's failure to provide Servicer with this information shall be deemed a material breach of this Agreement.

**5.3 Reserve Account.** Security Interests, Recoupment, and Set-Off. Merchant hereby authorizes Servicer to establish and maintain a non-interest bearing account ("Reserve Account") in Bank's name at any Federally-insured financial institution with sums provided by Merchant that are sufficient to satisfy Merchant's current or future obligations as determined by Servicer related to the Transactions processed under this Agreement, or otherwise incurred or anticipated to be incurred by Servicer on Merchant's behalf under this Agreement, applicable law or private regulation, including amounts owed to cover any Chargebacks, refunds, assessments, fees, fines, actual or potential losses, or risks, (collectively the "Liabilities"). All funds held in the Reserve Account shall be the sole and exclusive property of Bank, and Bank shall have sole control of the Reserve Account. Bank, but not ISO, shall have the right to initiate a debit to the Bank Account or any other account at any institution held by Bank or any of its Affiliates, at any financial institution maintained in Merchant's name, any of its principals, or any of its guarantors, or if any of same are authorized signers on such account to establish or maintain funds in the Reserve Account. Servicer may deposit into the Reserve Account funds it would otherwise be obligated to pay Merchant, if Servicer determines such action is reasonably necessary to protect its interests. Bank, on its own behalf or at ISO's request, may, without notice to Merchant, apply deposits in the Reserve Account against any outstanding amounts Merchant owes under this Agreement or any other agreement between Merchant and Bank or ISO. Funds in the Reserve Account will remain in the Reserve Account for the greater of 18 months or as is consistent with Servicer's liability for Transactions and Chargebacks in accordance with the Rules. Bank shall then direct payment of all surplus funds remaining in the Reserve Account, if any should exist, to Merchant. If, after ISO's reasonable efforts to locate Merchant, ISO is unable to locate Merchant to distribute any such surplus funds in the Reserve Account following termination, ISO shall charge Merchant a \$100.00 per month reserve maintenance fee which will be deducted from the surplus funds. Merchant acknowledges and agrees that Merchant's interest in the Reserve Account is strictly limited to surplus funds in the Reserve Account, if any should exist, after satisfaction of all Liabilities. In the event that a court for any reason determines at any time that Bank is not the sole and exclusive owner of the funds in the Reserve Account, then Merchant also grants to Bank and ISO a security interest in and lien to all funds held in the Reserve Account, regardless of source, as part of a security agreement within the meaning of the Uniform Commercial Code. Merchant also grants to Bank and ISO a security interest in and lien upon: (a) the Bank Account (as set forth in Section 5.9) and all funds at any time in the Bank Account, whatever the source of such funds; (b) future Transactions; and (c) all Merchant's rights relating to this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). Upon request of Servicer, Merchant will execute one or more financing statements or other documents to evidence this security interest. Merchant authorizes and appoints Servicer as its attorney in fact to sign its name to any financing statement used for the perfection of any security interest or lien granted in this Agreement. Merchant represents and warrants that no other party has a security interest in the Secured Assets. These security interests and liens will secure all of Merchant's obligations under this Agreement and any other agreements between Merchant and Servicer. With respect to such security interests and liens, Bank and ISO will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Bank and ISO written consent prior to granting a security interest of any kind in the Secured Assets to a third party. In the event of a bankruptcy proceeding, Bank may exercise the rights under this Agreement to debit the Reserve Account for amounts due to Servicer regardless of the pre-petition or post-petition nature of the amount due Servicer, and Merchant promises not to contest any Motion for Relief from Automatic Stay that Servicer may decide to file to debit the Reserve Account. Further, neither Bank nor ISO consents to the assumption of this Agreement in the event of a bankruptcy proceeding. Nevertheless, if this Agreement is assumed Merchant agrees that, in order to establish adequate assurance of future performance within the meaning of 11 U.S.C. Sec. 365, as amended from time to time, Merchant

must establish or maintain a Reserve Account in an amount satisfactory to Bank and ISO. Bank and ISO have the right of recoupment and set-off. This means that they may offset any outstanding/ uncollected amounts owed to them from any amounts they would otherwise be obligated to deposit into the Account, and any other amounts Servicer may owe Merchant under this Agreement or any other agreement. The rights conferred upon Bank and ISO in this Section are not intended to be exclusive of each other or of any other rights and remedies of Servicer under this Agreement, at law or in equity. Rather, each and every right of Servicer at law or in equity will be cumulative and concurrent and in addition to every other right.

**5.4 Service Providers.** Merchant warrants that it has disclosed all Service Providers (other than ISO) on the Merchant Application that are in use as of the Effective Date. Merchant will cause all of its Service Providers to comply with the PCI DSS, AISP, DISC, SDP, and EMV requirements at all times and will report any non-compliance to ISO. Merchant is responsible for ensuring Service Provider's compliance with the Rules. Merchant will notify ISO immediately if Merchant decides to use a terminal or Service Provider that is not disclosed on the Merchant Application. Merchant agrees that its Service Providers will be Merchant's agent in the delivery of Transactions to Bank via an approved processing system or network and will assume full responsibility and liability for any failure of that Service Provider to comply with the Rules or this Agreement. Merchant assumes all liability and responsibility for its Service Providers.

**5.5 Modifications to Agreement.** This Agreement will automatically be deemed to be amended to conform to the Rules as the Rules may be amended from time to time. Merchant may not amend this Agreement without the written agreement of Bank and ISO. Servicer may amend any provision of this Agreement, including without limitation those relating to the discount rate or to other fees and charges payable by Merchant by providing written notice to Merchant of the amendment at least 30 days before the effective date of the amendment. Merchant may terminate this Agreement without penalty upon receiving notice but otherwise shall be deemed to have consented to such amendments upon its submission of a Transaction to Servicer at any time after the effective date of the amendment. Amendments made by Servicer due to changes in either Card Brand's fees, Interchange Fees, assessments, Rules, or any law or judicial decision may become effective on such shorter period of time as Servicer may specify if necessary to comply with the applicable Rule, law or decision.

If Servicer's amendment to the Agreement is to pass through the Card Brand's fees, Interchange Fees, or assessments, Servicer will provide Merchant 30 days' notice before the effective date of the amendment; however, Merchant shall not be permitted to terminate this Agreement without penalty.

**5.6 Limitation of Liability; Indemnity.**

(a) **Limitation of Liability.** THE LIABILITY, IF ANY, OF SERVICER UNDER THIS AGREEMENT WHETHER TO MERCHANT OR TO ANY OTHER PARTY, SHALL NOT EXCEED, IN THE AGGREGATE THE DIFFERENCE BETWEEN (I) THE AMOUNT OF FEES PAID BY MERCHANT TO SERVICER DURING THE MONTH IN WHICH THE TRANSACTION OUT OF WHICH THE LIABILITY AROSE OCCURRED; AND (II) ASSESSMENTS, CHARGEBACKS, AND ANY OFFSETS AUTHORIZED UNDER THIS AGREEMENT AGAINST SUCH FEES WHICH AROSE DURING SUCH MONTH. IN THE EVENT MORE THAN ONE MONTH IS INVOLVED, THE AGGREGATE AMOUNT OF SERVICER'S LIABILITY SHALL NOT EXCEED THE LOWEST AMOUNT DETERMINED IN ACCORD WITH THE FOREGOING CALCULATION FOR ANY ONE MONTH INVOLVED. IN NO EVENT WILL BANK, ISO, NOR THEIR OFFICERS, AGENTS, DIRECTORS, OR EMPLOYEES BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES.

(b) **Indemnity.** MERCHANT HEREBY AGREES TO INDEMNIFY AND HOLD BANK, ISO, AND THEIR EMPLOYEES AND AGENTS HARMLESS FROM ANY CLAIM RELATING TO A DISPUTE BETWEEN MERCHANT AND A CARDHOLDER, AND/OR ANY TRANSACTION PAID FOR AS MAY BE MADE BY ANYONE BY WAY OF DEFENSE, DISPUTE, OFFSET, COUNTERCLAIM OR AFFIRMATIVE ACTION. MERCHANT AGREES TO INDEMNIFY BANK AND ISO FOR LOSSES THAT EITHER MAY INCUR AS A RESULT OF (I) MERCHANT'S BREACH OF ANY REPRESENTATION, WARRANTY, OR TERM OF THIS AGREEMENT; (II) A BREACH OF THE SECURITY OF THE SYSTEM SAFEGUARDING CARDHOLDER INFORMATION OR MERCHANT'S FAILURE TO COMPLY WITH PCI, AISP, EMV, AND/OR SDP; (III) MERCHANT'S NEGLIGENCE OR WILLFUL MISCONDUCT IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT; (IV) ANY VIOLATION OF THE RULES; AND (V) ALL THIRD-PARTY CLAIMS ARISING FROM THE FOREGOING.

**5.7 Warranty Disclaimer.** BANK AND ISO MAKE NO WARRANTIES REGARDING THE USE, OPERATION, OR PERFORMANCE OF SOFTWARE AND SYSTEMS UTILIZED FOR THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, AND BANK AND ISO EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Servicer will perform all Services in accordance with this Agreement. Bank and ISO make no other warranty, express or implied, regarding the Services, and nothing contained in the Agreement will constitute such a warranty. Bank and ISO disclaim all implied warranties, including those of merchantability and fitness for a particular purpose.

**5.8 Force Majeure.** No party will be liable to the other parties for any failure or delay in its performance of this Agreement where such failure occurs by reason of any act beyond such party's reasonable control and without the fault or negligence of such party. The party suffering a force majeure event shall give notice within 30 days of the force majeure event to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such force majeure event are minimized. The impacted party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the impacted party's failure or delay remains uncured for a period of 30 days following written notice given by it under this Section the other party may thereafter terminate this Agreement upon written notice.

**5.9 Bank Account.** Merchant will establish and maintain the Bank Account set forth in the Merchant Application that is approved by Bank. Merchant will maintain sufficient funds in the Bank Account to satisfy all obligations contemplated by this Agreement. Merchant must obtain prior written consent from Bank and ISO to change the Bank Account and will be subject to the Bank Account Change Fee identified in the Merchant Application. Merchant irrevocably authorizes Servicer to initiate debit/credit entries to the Bank Account as authorized under this Agreement. Bank will deposit all Transactions to the Bank Account subject to Section 3.1 of this Agreement. Bank, in its sole discretion, may grant Merchant provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Servicer and subject to all Chargebacks and other

amounts owed to Servicer under this Agreement. Merchant shall promptly examine all statements relating to the Bank Account, and immediately notify Bank and ISO in writing of any errors. Merchant's written notice must include: (a) Merchant's name and account number; (b) the dollar amount of the asserted error; (c) a description of the asserted error; and (d) an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by Bank and ISO within 30 days after Merchant received the periodic statement containing the asserted error, or Merchant shall have waived the right to contest any error. Merchant may not make any claim against Servicer for any loss or expense relating to any asserted error for 60 days immediately following receipt of Merchant's written notice. During that 60-day period, Servicer will be entitled to investigate the asserted error, and Merchant will not incur any cost or expense in connection with the asserted error. If Merchant is subject to more than five ACH returned items or reserve releases per calendar year, Servicer shall charge Merchant a \$50.00 per item surcharge in addition to Merchant's standard ACH Return fee. Merchant will indemnify and hold Bank and ISO harmless for any action they take against the Bank Account under this Section.

**5.10 Fees and Other Amounts Owed.** Merchant shall pay the fees and charges as set forth in the Merchant Application the provisions of which are incorporated herein by reference. Unless otherwise noted, Merchant shall pay all fees monthly or daily as set forth on the Merchant Application or at ISO's sole discretion. The Account will be debited through ACH for such amounts and for any other fees, charges or adjustments incurred by Merchant and associated with processing services. Merchant is also obligated to pay all taxes and other charges imposed by any governmental authority on the Services provided under this Agreement. Merchant will immediately pay Servicer any amount incurred by ISO attributable to this Agreement or any other agreement between Merchant and ISO or any subsidiary or affiliate of ISO, including but not limited to equipment fees, Chargebacks, fines imposed by a third party, non-sufficient fund fees, and ACH debits that overdraw the Bank Account, Reserve Account, or are otherwise dishonored. Merchant authorizes Servicer to debit via ACH the Bank Account, Reserve Account, any other account Merchant has with ISO, an affiliate or subsidiary of ISO, Bank or at any other financial institution for any amount Merchant owes under this Agreement or under any other contract, note, guaranty, or dealing of any kind now existing or later entered into between Merchant and ISO or any subsidiary or affiliate, whether Merchant's obligation is direct, indirect, primary, secondary, fixed, contingent, joint, or several. In the event such ACH does not fully reimburse Servicer for the amount owed, Merchant will immediately pay Servicer such amount.

**ARTICLE VI - MISCELLANEOUS**

**6.1 Waiver.** Failure by Bank or ISO to enforce one or more of terms of this Agreement, to exercise any option which is provided, or to require at any time performance by either party, shall in no way be construed to be a waiver of the right to enforce the same or other provisions in the future. The waiving party must sign all waivers. All rights and remedies of the parties are cumulative, not alternative.

**6.2 Notices.** All notices and other communications required or permitted under this Agreement shall be deemed delivered when mailed by Merchant via overnight carrier or certified mail, and when mailed by ISO/Bank, by first class mail, postage prepaid, addressed to the attention of Merchant Services (legal notices or issues involving disputes addressed to the attention of General Counsel) and to the address listed on the Fee and Regulatory Disclosure cover page or the mailing address listed on the Merchant Application. Alternatively, ISO and Bank may provide notice and other communications required or permitted under this Agreement to Merchant electronically by sending such notice to the Contact Email Address identified in the Merchant Application or by posting such notice on the Merchant Hub system.

**6.3 Choice of Law; Jurisdiction.** This Agreement shall be governed and construed under the laws of the State of Utah. All claims or controversies between the parties related to this Agreement, which are not otherwise settled by agreement of parties, will be submitted to and decided by binding arbitration as set forth in Section 6.15 below.

**6.4 Entire Agreement.** This Agreement, including the Merchant Application and all associated exhibits, addenda, and attachments sets forth the entire fully-integrated agreement and understanding of the parties regarding its subject matter, and supersedes all prior agreements, promises, arrangements, representations or warranties, and communications, whether oral or written, by any officer, partner, employee or representative of any party hereto relating to the subject matter hereof and, except as provided herein, may be modified only in a writing executed by all parties and constitutes a fully integrated document.

**6.5 Assignability.** Merchant shall not assign payments due to it under this Agreement to a third party. Merchant may only assign future transaction receivables under this Agreement to Servicer, its affiliated entities, or any other cash advance funding source that partners with Servicer or its affiliated entities. This Agreement may be assigned by Servicer at any time in its sole discretion, but may not be assigned by Merchant, directly or by operation of law, without the prior written consent of Bank and ISO. Merchant shall cooperate in all respects with ISO in connection with the assignment of this Agreement and shall execute and deliver any such documents as may be reasonably requested by ISO or its assignee in connection with the Assignment of this Agreement. Merchant acknowledges and agrees that ISO may distribute information including but not limited to the Merchant Application, this Agreement, Confidential Information, Cardholder information, and Transaction Data to any potential assignee. Upon assignment of this Agreement, Merchant shall send all notices or other communications required or permitted under this Agreement to the party to whom this Agreement was assigned. Should Merchant assign this Agreement improperly, Merchant shall indemnify and hold harmless Bank and ISO for such improper assignment including without limitation any claims to the Reserve Account.

**6.6 Credit and Financial Inquiries; Additional Locations; Inspections.** Merchant authorizes Servicer to make, at any time, any credit inquiries which either considers necessary to either review acceptance of this Agreement or investigate Merchant's deposit or Card acceptance practices subsequent to acceptance of this Agreement. Such inquiries shall include but are not limited to a credit check of the business including its proprietor, partners, principal owners, or officers. If requested to do so by Bank or ISO, Merchant shall provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement, and will provide any financial statements, income tax and business tax returns, and other financial information as Bank or ISO may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices, and Merchant shall receive a copy of all such reports upon reasonable request and if required under state's laws. Any financial statements provided must be prepared in accordance with generally accepted accounting principles. Merchant may honor Cards only at locations approved by Servicer. Additional locations may be added subject to Servicer's approval. Either Merchant or ISO may delete any location by providing notice as provided in this Agreement.

Merchant agrees to permit Bank or ISO to inspect locations at any time to confirm that Merchant was or is adhering to the terms of this Agreement.

**6.7 Attorneys' Fees.** Merchant will be liable for and will indemnify and reimburse Servicer for all attorneys' fees and other costs and expenses paid or incurred by Servicer in the enforcement of this Agreement, a violation of the Rules, or in collecting any amounts due from Merchant to Servicer or resulting from any breach by Merchant of this Agreement. All reasonable documented, actual expenses (including, without limitation, reasonable attorneys' fees) that a party incurs in responding to legal process from third parties related to a claim against or investigation of the other party (of which the responding party is not a party to or subject to the applicable legal process) shall be reimbursed to the responding party by such other party.

**6.8 Signature.** Merchant's acceptance of this Agreement will be evidenced by its signature on this Agreement or its submission of Transactions. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors, and assigns. Merchant represents and warrants that the person(s) executing this Agreement is duly authorized to bind Merchant to all provisions of this Agreement, and that such person(s) is authorized to execute any documents and to take any action on behalf of Merchant, which may be required by Servicer now or in the future. Merchant acknowledges that if Merchant has not signed above, Merchant agrees that Merchant's first transmission of Transactions constitutes Merchant's acceptance of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same instrument. A facsimile or electronic signature will be binding and legal in all respects as if it were an original signature.

**6.9 Severability.** In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provisions shall be replaced by a mutually acceptable provision, which, being valid, legal and enforceable, comes closest to the intentions of the parties underlying the invalid, illegal, or unenforceable provisions.

**6.10 Responsibility.** Merchant is responsible for its employees' actions while in its employ.

**6.11 Third-Party Beneficiaries.** Notwithstanding anything in this Agreement to the contrary, The Card Brands shall have third-party beneficiary rights, but not obligations, to the terms of this Agreement applicable to the Card acceptance of the respective Card Brands to enforce such terms against Merchant. Except for the Third-Party Beneficiary status of the Card Brands as set forth in the preceding sentence, this Agreement does not and is not intended to confer any rights or benefits on any person that is not a party hereto, and none of the provisions of this Agreement will be enforceable by any person other than the parties hereto, their successors, and permitted assigns.

**6.12 Survival.** Sections, 2.5, 2.12, 2.15, 2.16, 2.18, 2.19, 3.2, 3.5, 3.6, 4.2, and the entirety of Article 5 and Article 6 will survive termination of this Agreement.

**6.13 Interpretation and Construction.** In construing this Agreement, unless the context requires otherwise: (a) the singular includes the plural and vice versa; (b) the term "including" means "including, but not limited to;" (c) the term "day" means calendar day; (d) any reference to any agreement (including this Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from time to time; and (e) all captions, headings, and similar terms are for reference only and will not affect the interpretation of any provision. All Sections mentioned in this Agreement reference Section numbers of this Agreement. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction or construction against the drafter will be applied against any Party.

**6.14 Dispute Resolution.** Prior to initiating legal action against Bank or ISO arising out of or related to this Agreement, Merchant shall provide Bank and ISO written notice of its intent to pursue legal action. In the event the parties are unable to resolve the dispute arising out of or related to this Agreement within 60 days of Merchant's delivery of written notice to Bank and ISO, Merchant may initiate Arbitration proceedings in accordance with Section 6.15. Merchant must provide Servicer with any documents (including but not limited to Transaction Receipts and bank statements) requested in connection to such notice, except that any dispute related to the validity of Bank, ISO or Merchant's intellectual property rights may not be submitted for arbitration. Merchant must adhere to all the dispute resolution guidelines and procedures set forth in the Rules for any claims or disputes it asserts against any Card Brand.

**6.15 Arbitration Agreement for Claims Including Without Limit Those Involving American Express.** In the event that Merchant, Bank, ISO, or American Express are not able to resolve a Claim (defined below), this Section 6.15 explains how Claims may be resolved through arbitration. Merchant, Bank, ISO, or American Express may elect to resolve any Claim by binding individual arbitration. Claims will be decided by a neutral arbitrator. If arbitration is elected by any party to resolve a Claim, the parties understand and agree that neither Merchant, Bank, ISO, nor American Express will have the right to litigate or have a jury trial on that Claim in court. Further, Merchant, Bank, ISO, and American Express understand and agree that the parties will not have the right to participate in a class action or in a representative capacity or in a group of persons alleged to be similarly situated pertaining to any Claim subject to arbitration. Arbitrator's decisions are final and binding, with very limited review by a court, and once confirmed by a court of competent jurisdiction, an arbitrator's final decision on a Claim is generally enforceable as a court order. Other rights Merchant, Bank, ISO, or American Express would have in court may also not be available in arbitration.

(a) Initiation of Arbitration. Claims may be referred to either Judicial Arbitration and Mediation Services ("JAMS") or American Arbitration Association ("AAA"), as selected by the party electing arbitration. Claims will be resolved pursuant to this Section 6.15 and the selected arbitration organization's rules in effect when the Claim is filed. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, if Bank, ISO, or American Express, on one hand, selects the organization and Merchant, on the other hand, selects the other within 30 days thereafter or if an arbitrator is appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA"). Any arbitration hearing will take place in Utah County, Utah except with respect to Claims involving American Express where arbitration hearing will take place in New York, NY.

(b) Limitations on Arbitration. If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. No Claim is to be arbitrated on a class or purported representative basis or on behalf of the general public or other persons allegedly similarly situated. The arbitrator's authority is limited to Claims between Merchant, Bank, ISO, and American Express. An arbitration award and any judgment confirming it will apply only to the specific case brought by Merchant, Bank, ISO, or American Express and cannot be used in any other case except to enforce the award as between Merchant, Bank, ISO, and American Express. This prohibition is intended to, and does, preclude Merchant from participating in any action by any trade association or other organization

against Bank, ISO and American Express. Notwithstanding any other provision in this Section 6.15, if any portion of these Limitations on Arbitration set forth in this Section 6.15(b) is found invalid or unenforceable, then the entire Section 6.15 (other than this sentence) will not apply, except that Merchant, Bank, ISO, and American Express do not waive the right to appeal that decision.

(c) Previously Filed Claims/No Waiver. Merchant, Bank, ISO, or American Express may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. Merchant, Bank, ISO, or American Express may choose to delay enforcing or to not exercise rights under this Section 6.15, including the right to elect to arbitrate a claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this Section 6.15 applies to any class-action lawsuit relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express Card acceptance agreement, that was filed against American Express prior to the effective date of this Agreement to the extent that such claims are not already subject to arbitration pursuant to a prior agreement between Merchant and American Express.

(d) Arbitrator's Authority. The arbitrator will have the power and authority to award any relief that would have been available in court. The arbitrator has no power or authority to alter the Agreement or any of its separate provisions, including this Section 6.15.

(e) Split Proceedings for Equitable Relief. Merchant, Bank, ISO, and American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits if necessary to preserve the status quo pending completion of the arbitration. This Section 6.15 shall be enforced by any court of competent jurisdiction.

(f) Small Claims. Merchant, Bank, ISO, and American Express will not elect arbitration for any Claim Merchant properly files in a small claims court so long as the Claim seeks individual relief only and is pending only in that court.

(g) Governing Law/Arbitration Procedures/Entry of Judgment. This Section 6.15 is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply Utah law except with respect to Claims involving American Express, where it shall apply New York law and applicable statutes of limitations and honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not federal or any state rules of procedure or evidence, provided that any party may ask the arbitrator to expand discovery by making a written request, to which the other parties will have 15 days to respond before the arbitrator rules on the request. If Merchant's Claim is for \$10,000.00 or less, Merchant may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. At the timely request of a party, the arbitrator will provide a written opinion explaining his/her award. The arbitrator's decision will be final and binding, except for any rights of appeal provided by the FAA. If a Claim is for \$100,000 or more, or includes a request for injunctive relief, (i) any party to this Agreement shall be entitled to reasonable document and deposition discovery, including reasonable discovery of electronically stored information, as approved by the arbitrator, who shall consider, inter alia, whether the discovery sought from one party is proportional to the discovery received by another party, and no less than five depositions per party; and (ii) within 60 days of the initial award, either party can file a notice of appeal to a three-arbitrator panel administered by the selected arbitration organization, which shall reconsider de novo any aspect requested of that award and whose decision shall be final and binding. If more than 60 days after the written arbitration decision is issued the losing party fails to satisfy or comply with an award or file a notice of appeal, if applicable, the prevailing party shall have the right to seek judicial confirmation of the award in any state or federal court where Merchant's headquarters or Merchant's assets are located.

(h) Confidentiality. The arbitration proceeding and all information submitted, relating to or presented in connection with or during the proceeding, shall be deemed confidential information not to be disclosed to any person not a party to the arbitration. All communications, whether written or oral, made in the course of or in connection with the Claim and its resolution, by or on behalf of any party or by the arbitrator or a mediator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding; provided, however, that evidence shall not be rendered inadmissible or non-discoverable solely as a result of its use in the arbitration.

(i) Costs of Arbitration Proceedings. Merchant will be responsible for paying Merchant's share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees Merchant would have incurred if Merchant had brought a claim in court. Bank, ISO, or American Express will be responsible for any additional arbitration fees. At Merchant's written request, Bank, ISO, or American Express will consider in good faith making a temporary advance of Merchant's share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.

(j) Additional Arbitration Awards. If the arbitrator rules in Merchant's favor against Bank, ISO, or American Express for an amount greater than any final settlement offer Bank, ISO, or American Express made before arbitration, the arbitrator's award will include any money to which Merchant is entitled as determined by the arbitrator, but in no case less than \$5,000.00, and any reasonable attorneys' fees, costs and expert and other witness fees incurred by Merchant.

(k) Definitions. For purposes of this Section 6.15 only, "American Express" includes its Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing; "Merchant" includes Merchant's Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing; and "Claim" means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against Bank, ISO, or American Express or any other entity (including Merchant, Bank, ISO, or American Express) that Bank, ISO, or American Express has the right to join, including any allegation involving a transaction using an American Express or other Card Brand product or network or regarding an American Express policy or procedure or the Rules.

**6.16 Bank.** Bank and ISO may jointly or individually assert or exercise any rights or remedies provided to the other or to Servicer hereunder. Bank and ISO reserve the right to allocate the duties and obligations assigned hereunder to Servicer, ISO, or Bank between themselves, as they deem appropriate in their sole discretion. Bank has certain obligations to Merchant pursuant to the Rules. In the event of any conflict between this Agreement and the Rules on the subject of Bank's obligations, the Rules shall control. The Bank may delegate certain or all of its rights and duties to an affiliate of the Bank at any time, without notice to Merchant. The Bank's rights and obligations under this Agreement may be assigned by Bank or ISO to another party at any time without prior notice to Merchant. Merchant hereby agrees to such assignment.